



FR-4915-01-P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36010]

Wheeling & Lake Erie Railway Company—Operation Exemption—Valley Line in Harrison and Jefferson Counties, Ohio

Wheeling & Lake Erie Railway Company (W&LE) a Class II rail carrier, has filed a verified notice of exemption under 49 CFR 1150.31<sup>1</sup> to operate approximately 14.6 miles of trackage in Harrison and Jefferson Counties, Ohio consisting of two segments: (a) between milepost 188.5 and milepost 189.1 near Unionvale and (b) between milepost 191.5 near Adena and milepost 205.54 near Warrenton. Both segments are part of a previously abandoned rail line known as the Valley Line.

In 1999, W&LE received exemption authority to abandon the Valley Line.<sup>2</sup> W&LE consummated its abandonment in 2003 but did not pursue salvage, and W&LE indicates that the trackage on the two segments for which an exemption is sought here

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<sup>1</sup> W&LE states that, where an existing Class II carrier seeks to resume operations on a previously abandoned line, the transaction is appropriately considered under the expedited notice of exemption procedures of 49 CFR 1150.32-34 so long as the anticipated revenues of the subject rail line itself do not exceed those of a Class III rail carrier. See Buffalo & Pittsburgh R.R.—Operation Exemption—Lucerne Branch in Pa., FD 31372 (ICC served Dec. 22, 1988). W&LE includes with its verified notice of exemption a certification pursuant to 49 CFR 1150.33(g) that the projected revenues of the Valley Line do not exceed those that would qualify a stand-alone operator of the Valley Line as a Class III rail carrier.

<sup>2</sup> See Wheeling & Lake Erie Ry.—Aban. Exemption—in Harrison & Jefferson Cts., Ohio, AB 227 (Sub-No. 9X) (STB served Oct. 19, 1999).

has remained in place.<sup>3</sup> With the current transaction, W&LE seeks to resume its common carrier status on the two segments of the Valley Line.

W&LE states that its proposed operations do not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

W&LE states that its current annual rail revenues exceed \$5 million. It notes, however, that the Board has held that the advance notice requirement of 49 CFR 1150.32(e) is inapplicable to the proposed resumption of operations over a previously abandoned line. See R.J. Corman R.R./Memphis Line—Operation Exemption—Line in Montgomery & Stewart Ctys., Tenn., FD 33841 (STB served Jan. 18, 2000).

The transaction may be consummated on or after September 22, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).<sup>4</sup>

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the

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<sup>3</sup> Originally, W&LE filed its verified notice seeking to operate the Valley Line all the way between milepost 188.5 and milepost 205.54. In an August 23, 2016 amendment, however, the applicant excludes from its verified notice approximately 2.4 miles of trackage (between milepost 189.1 near Unionvale and milepost 191.5 near Adena) on which certain rail assets have been removed. W&LE states that it will seek appropriate authority from the Board at such time as the applicant may seek to resume operations on that segment.

<sup>4</sup> Because the verified notice was supplemented on August 23, 2016, that date will be considered the filed date of the verified notice.

effectiveness of the exemption. Petitions for stay must be filed no later than September 15, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36010, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on applicant's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

According to W&LE, this action is exempt from environmental reporting requirements under 49 CFR 1105.6(c).

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Decided: September 2, 2016.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

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Clearance Clerk

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